

August 14, 2017

Enrique Manzanilla  
U.S. EPA Region 9  
Superfund Division (SFD-1)  
75 Hawthorne Street  
San Francisco, CA, 94105

RE: Review of the DRAFT Memorandum of Understanding between Environmental Protection Agency, Region IX, State of Nevada Division of Environmental Protection and Yerington Paiute Tribe Concerning the Anaconda Mine Site, Yerington Nevada

We have initiated review of the MOU and are providing a redline/track changes commented version for ease of editing. It is noteworthy that the MOU outlines the division of the site into state and Tribal concerns contrary to CERCLA, legislation designed to provide unified environmental regulation and response to sites including those in multiple states and/or jurisdictions. This action is also contrary to Recommendation 19 of the *Recommendations by the Superfund Task Force in response to administrator Scott Pruitt's request on May 22, 2017*:

*RECOMMENDATION 19: Expand Cleanup Capacity by Designating One Agency Lead for Each Project in Order to Reduce Overlap and Duplication Specific Actions:*

- *Increase use of Memoranda of Understanding with federal agencies, states and tribes to identify lead agencies for each site and roles and responsibilities for each.*
- *Identify situations or phases of cleanup for which certain agencies should have primary responsibility (e.g., tribal/state/local responsibility for long-term stewardship of sites).*

As indicated by the Tribal Council Resolution attached, there is no existing MOU that applies to the site. There is concern that NDEP claiming one exists despite reminders from our staff, EPA staff and our Environmental Department arranging hand delivering a copy of the Tribal Resolution to the Director of NDEP, indicates a lack of understanding regarding the CERCLA response, a serious lack of capacity to handle this site.

In general, with the reach of the Walker River between the confluence of the Wabuska Drain and the Weber Reservoir being adding to the site, the vast majority of the site is now BLM and Tribal Trust property. It is unknown how allowing an agency that has authority on less than 50% of the site will be an effective lead.

Despite the failure of the attached MOU to address the issue at point, an MOU between the Tribe, EPA and NDEP may be needed to appropriately address the site as indicated in Recommendation 19. However, this will likely be one that acknowledges the legal reality of CERCLA and tribal sovereignty and the need for continued EPA lead with NPL listing for the site.

With the addition of 3,350 acres of the Walker River Paiute Reservation being adding to the investigation of the site, we are also using this letter to request consultation to allow EPA to review this action with our Council. This will also be an excellent opportunity to begin planning to determine the risk mine site contamination in 2,550 acres of our river and wetlands and our 800-acre reservoir creates for our Tribal members and community. Please contact Tashani Jim, our Superfund and GAP coordinator, at 775.773.2306 to make those arrangements.

Sincerely,

Amber Torres  
Chairman, Walker River Paiute Tribe

C:

Greg Lavato, NDEP  
Lauri Thom, Chairman, YPT

Attachments:

Redline comments of the MOU  
White paper on site property ownership  
Tribal Resolution regarding MOUs with NDEP and Deferral  
White paper regarding CERCLA document review periods